

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

ARTICLE I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
2. To develop uniform standards for insurance products covered under the Compact;
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, *in certain cases, advertisements* related thereto, submitted by insurers authorized to do business in one or more Compacting States;

Comment: Even though this purpose indicates advertisements will be subject to review only in certain cases, there is no subsequent language in the compact that specifies which advertisements can be subjected to prior approval of the commission. Some years ago, Louisiana's legislature considered adopting a prior approval system for insurers' advertising and decided against it. At the very least, such a system delays introduction of new products to the market place; at its worst, it will cause regulatory interference in the market place simply by an elapse of time between approvals granted for competitors on similar products.

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding *the setting of uniform standards* and review of insurance products covered under the Compact;

Comment: This is pure fluff. The commission will be setting the standard itself, not improving various states' ability to set standards.

6. To create the Interstate Insurance Product **Regulation** Commission; and

Comment: Originally, this compact's purpose was "approval" of products, to permit products to get to the market faster. The departure of the commission to become a regulatory agency is a large one. While the title now better reflects the content of the

compact, the proponents continue to espouse that the compact has a limited and narrow scope. It does not.

7. To perform these *and such other related functions* as may be consistent with the state regulation of the business of insurance.

Comment: This is a very broad purpose. Given that states by nature are inconsistent and sometimes contradictory, which state will this commission try to be consistent with? If the function exists in a state's regulatory scheme, this language appears to give the commission the purpose to develop public policy of its own surrounding that function. Later, in this document, we will find that the commission's actions have the force of law in states. Together, this is cause for concern. Legislators should be very concerned about this broad delegation of legislative authority to another body. In some, if not most, states, such delegation of legislative power is unconstitutional.

ARTICLE II. DEFINITIONS

For purposes of this Compact:

1. "Advertisement" means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, *as more specifically defined in the Rules and Operating Procedures of the Commission.*

Comment: Broadest possible definition of advertising is here. Specifics of the Commission's interest in advertising to be determined later.

2. "Bylaws" mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.
4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.
5. "Commissioner" means the chief insurance regulatory official of a State *including, but not limited to commissioner, superintendent, director or administrator.*

Comment: Recommend striking italic language and replacing it with "regardless of the title of the position in the respective state." Proposed language enumerating current titles used is unnecessary and use of "including" could bring more members from a state if more than one title enumerated exists there.

6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.

7. “Insurer” means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.
8. “Member” means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.
9. “Non-compacting State” means any State which is not at the time a Compacting State.
10. “Operating Procedures” mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.
11. “Product” means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.
12. “Rule” means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.
13. “State” means any state, district or territory of the United States of America.
14. “**Third-Party Filer**” means an entity that submits a Product filing to the Commission on behalf of an Insurer.

Comment: Who is this? Certainly the Commission cannot intend to have a brother-in-law operation that becomes the high priced access to speedy approvals from the Commission. Without clear ethics laws governing the relationship of the third-party filer to the Commission, this is a potentially disgraceful provision. Certainly even without this definition, an insurer could choose an independent consultant to represent him. There is no life industry equivalent of ISO who has an historic role in making form filings which smaller companies adopt with “me too” filings. There may be some consulting firms which specialize in doing this for smaller companies, and their role should be anticipated. Either substantially revise or delete this definition.

15. “Uniform Standard” means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements ***in aggregate***; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

Comment: What is the meaning of “in aggregate”? Will all products in a product line have to meet one uniform standard? Will we deprive consumers of choices in the market place? This definition needs greater clarity.

Drafting Note: Although consideration was given to including in the model definitions for ‘life insurance,’ ‘annuity,’ ‘disability income insurance’ and ‘long-term care insurance,’ it was determined that such definitions would be more appropriately addressed through the Commission’s rule-making process. Not all of the states currently have definitions for ‘life insurance.’

ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish an entity known as the “Interstate Insurance Product Regulation Commission.” Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.
2. The Commission is a body corporate comprising each Compacting State.
3. The Commission is a not-for-profit entity, separate and distinct from the individual Compacting States.
4. The Commission is *solely responsible for its liabilities* except as otherwise specifically provided in this Compact.

Comment: It is hard to imagine that financial liabilities for an insolvent commission would not fall to the state members when industry starts to depend on the existence of this commission. Also, this language cannot be expected to immunize a state from liability when grossly improper actions are performed by its public official who serves in the dual capacity of a state government official and the state’s member of the Commission.

5. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

Comment: This is inconsistent with venue provisions regarding any other corporate body. Venue can be where the damage or injury occurred. This differs for state agencies to some extent in Louisiana, but travel to the 19th Judicial District Court, where many state actions must be brought, is no more than four hours by car from anywhere in the state. Aside from the home court advantage, this Commission will cause undue financial hardships on those who disagree through litigation. At the very least, venue should be in federal court where the damage occurs, as litigation with any

other corporation would be. As a multi-state agency, a court of only one state should not have exclusive jurisdiction, in actions against the commission.

ARTICLE IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

Comment: Note well that the powers to follow are legislative, executive and judicial in nature. Such divesting of governmental powers to a single, mostly unelected body is a grave disservice to our citizens.

1. To promulgate Rules, pursuant to Article VII of this Compact, which ***shall have the force and effect of law and shall be binding in the Compacting States*** to the extent and in the manner provided in this Compact;

Comment: This is a delegation of lawmaking authority -- something expressly prohibited in the Louisiana Constitution. Given that the rule remains in force until a state legislature actively rescinds it by law, the authority is only slightly less than absolute.

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, ***which shall have the force and effect of law and shall be binding in the Compacting States***, but only for those Products filed with the Commission, *provided*, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

Comment: This is a delegation of lawmaking authority to the executive branch -- something expressly prohibited in the Louisiana Constitution. Given that the standard remains in force until a state legislature actively rescinds it by law and applicable to any products approved in the meantime, the authority is only slightly less than absolute.

3. To receive and review in an expeditious manner Products filed with the Commission, and ***rate filings for disability income and long-term care insurance Products***¹, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall ***have the force and effect of***

law² and be binding on the Compacting States to the extent and in the manner provided in the Compact;

¹*Comment: Louisiana does not currently require rate filings for disability income or long term care insurance products. This is the opposite of streamlining the product approval process.*

²*Comment: Compact commission is making law again.*

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission *shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use*, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section *shall have the force and effect of law and shall be binding in the Compacting States²* to the extent and in the manner provided in the Compact;

¹*Comment: Louisiana chooses not to regulate advertising. If the Commission chooses to regulate advertising, there should be expressed standards for the time the Commission can hold the advertising — no more and no less. Otherwise, the Commission could engage in significant interference in the market place by allowing one company's advertising to hit the media first. There should be significant penalties against the commission if it is found to be engaging in such collusion. (How does this not trample on Freedom of Speech?)*

²*Comment: Compact commission is making law again.*

Drafting Note: With respect to Advertisement, the Working Group believes the Commission should develop and adopt Uniform Standards for Advertisement regarding Products covered under the Compact. *With the exception of long-term care insurance products, the Commission would generally not receive and approve any Advertisement.*

Comment: This Drafting Note contradicts the language of the Compact. Which is it -- Commission will or will not do prior approval of all advertising?

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.
6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be *binding* in the Compacting States to the extent and in the manner provided in this Compact;

Comment: Commission is writing laws again.

7. *To bring and prosecute legal proceedings or actions* in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

Comment: Coupled with the venue provisions, this Commission gains some very large home court advantages. By this provision, the Commission could bring legal proceedings against Louisiana in another state's court.

8. To *issue subpoenas* requiring the attendance and testimony of witnesses and the production of evidence;

Comment: This is generally held as a judicial branch function. Louisiana's insurance commissioner does not have such broad subpoena power.

9. To establish and maintain offices;
10. To purchase and maintain insurance and bonds;
11. To *borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;*

Comment: But Civil Service provisions may not follow them. These employees will no longer be barred from political activities. See Article V, 1, c, vi. Any implication that state personnel (who are classified civil servants) "borrowed" by the Commission would be exempt from civil service provisions would constitute an unconstitutional infringement of the State Civil Service Commission's power and authority under Art. X of La. Const. Remember, this is a non profit corporation, not a government entity; there is no Hatch Act provision of law applicable to employees of a nonprofit.

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, *conflicts of interest*, rates of compensation and qualifications of personnel;

Comment: Commission is being authorized to create rules that disregard state's ethics laws. Again note that the compact is silent on the potential of applying Hatch Act provisions to these employees.

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; *provided that at all times the Commission shall strive to avoid any appearance of impropriety;*

Comment: A flimsy standard at best.

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; *provided that at all times the Commission shall strive to avoid any appearance of impropriety;*

Comment: A flimsy standard at best.

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

Comment: The Commission won't even adopt a similar flimsy ethics standard for this provision. Appearance of impropriety is acceptable for these transactions. What property might it abandon or otherwise dispose of?

16. To remit filing *fees* to Compacting States as may be *set forth in the Bylaws, Rules or Operating Procedures;*

Comment: Conflicts with later provision where Commission charges fees that fully fund the Compact Commission's operations. See Article XII, 2. Filing fees due in Louisiana are currently set by law; we do not delegate this authority even to the Department of Insurance. Some states may even require a super majority vote in order to pass fee increases. No protection from unreasonably high fees exists here.

17. To *enforce compliance* by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

Comment: A unique departure from the separation of powers doctrine. This group will make the rules and enforce them. Not a single legislator in Louisiana has the power to enforce laws.

Drafting Note: The Working Group recognizes that the Commission must have authority to enforce compliance by Compacting States with the Bylaws, Rules or Operating Procedures of the Commission.

18. To provide for dispute resolution among Compacting States;
19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;
20. To *provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;*

Comment: Sort of a super regulator for states even for products that are not filed in multiple states.

21. To *establish a budget* and make expenditures;

Comment: Budgets set by this organization should be subject to oversight by member legislatures or some other appropriate accountable entity.

22. To *borrow money*;

Comment: Who beyond the commission bears the ultimate responsibility for repaying this debt? Member states?

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, *state legislators or their representatives*, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;

Comment: Selected legislators will get the official duty to “advise.” Not vote, mind you. Plus, there is no likelihood that a watchdog-type legislator will be selected for this role.

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To *perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.*

Comment: Liberally construed, this is a very broad power that need only be consistent with some state’s scheme of regulation or even the Commission’s concept of what constitutes state regulation.

ARTICLE V. ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

- a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.
- b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

- c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

- I. establishing the fiscal year of the Commission;
- ii. providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;
- iii. providing reasonable standards and procedures: (I) for the establishment of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
- iv. providing reasonable procedures for calling and conducting meetings of the Commission, and ensuring reasonable notice of each such meeting;
- v. establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
- vi. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. ***Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies*** and programs of the Commission; and

Comment: Exemption from state civil service and “Little Hatch Act” laws, thus lifting bars on political activities of these employees.

- vii. providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

Comment: Rules for dissolution should be clear from the outset, not subject to Bylaws to be subsequently adopted.

2. Management Committee, Officers and Personnel

Comment: A powerful committee — sort of a Rules Committee. These 14 states control what can be submitted to other compact members. This has the potential of killing any innovative products coming from a small company in a non-rules committee state.

- a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

Comment: Number of companies doing business in a state may be more significant than premium volume in selecting these companies. Remember, the commission is not supposed to become a captive of the largest players in the market place.

- I. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;
- ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws, and;
- iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

Comment: Odd that middle group rotates, large and small do not.

Drafting Note: In developing the composition of the Management Committee, the Working Group considered the role of ***(Comment: Insert in your reading “a few” not “each of the”)*** Compacting States in governance and operational issues. It was the desire of the Working Group to achieve a proper balance on the Management Committee between the Compacting States based on premium volume and geographical diversity. Accordingly, factors such as a Compacting State’s premium volume for annuity, individual and group life insurance, disability income, and long-term care insurance products, as well as geographical representation using the zone regions of the NAIC were utilized. The Working Group believes there are certain advantages to having Compacting States with large premium markets play a significant role on the Management Committee. The Working Group also recognized possible issues being raised by the Compacting States with smaller premium volume with respect to the overall balancing of interests of members on the Management Committee.

Additional Note: The concept of serving on a ***“rotating basis”*** involves giving each Compacting State in the group the opportunity to serve the same number of terms on the Management Committee before any other Compacting State in the group serves an additional term. For example, those members representing Compacting States in the group shall each serve one term on the Management Committee before any such State serves a second term.

Comment: If this is the meaning of “rotating basis,” this should be added to the definitions section of the Compact. Otherwise, the term will become meaningless over time.

- b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, ***including but not limited to:***

Comment: Note the Management Committee’s authority will extend beyond those enumerated here.

- I. managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;
- ii. establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of

- Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;
- iii. overseeing the offices of the Commission; and
- iv. planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.
- c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.
- d. The Management Committee may, subject to the approval of the Commission, appoint or *retain an executive director for such period*, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

Comment: Management Committee can contract for an executive director beyond their own term. While some continuity may be achieved through the E.D.'s term overlapping management board terms, one management committee should not set management style forever. Recommend regular renewal of contract not to exceed four years.

3. Legislative and Advisory Committees

A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; ***provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws.***¹ Prior to the adoption by the Commission of any Uniform Standard, ***revision to the Bylaws***², annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

Drafting Note: It is anticipated that the number and manner of selecting legislators as members of the legislative committee will be addressed in the Bylaws. Additionally, consideration will be given to the creation of other advisory committees depending on the needs of the Commission

¹Comment: If this wasn't serious, this legislator would be laughing. This commission is going to decide who and how long a legislator will serve on the advisory committee? At the very least, every state should appoint two legislators to serve.

²Comment: Legislators will be involved in revision of bylaws, but not adoption.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

Comment: But not subject to public records laws.

5. Qualified Immunity, Defense and Indemnification

- a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; ***provided***, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.
- b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.
- c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote *to which that Compacting State is entitled*¹ and to participate in the business and affairs of the Commission. A Member shall vote in person or *by such other means* as provided in the Bylaws. The Bylaws may provide for Members' *participation in meetings by telephone or other means of communication*.²

¹*Comment: This qualifier indicates the bylaws could weight votes from states.*

² *Comment: Taking votes by phone or any means other than being present in person absolutely ignores Louisiana's open meeting laws and, I presume, most other states' and the federal government's.*

3. The Commission shall meet *at least once during each calendar year*. Additional meetings shall be held as set forth in the Bylaws.

Comment: States will assume considerable new costs because of its association with this compact.

ARTICLE VII. RULES & OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. *Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.*

Comment: Who decides that this action outside of the Commission's authority took place? This must be one of the issues that will be litigated where the Commission is headquartered and gets special deference from the Court.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that *substantially conforms* to the principles of the Model State Administrative Procedure Act, *as may be appropriate to the operations of the Commission*. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard.

Comment: This is outrageous disregard of the Administrative Procedure Act. No state agency is ever allowed to deviate from the APA when the agency deems it appropriate to do so. If that were the case, agencies would rarely follow the APA.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become *effective ninety (90) days*¹ after its promulgation by the Commission or such

later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. “Opt out” shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. ***All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.***²

¹Comment: Louisiana’s APA is a 90 day process. Even using rulemaking rather than lawmaking to opt out cannot be completed in sufficient time to be effective prior to the Uniform Standard becoming effective.

²Comment: All other rules can become effective even faster.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State’s Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ***ten (10) business days***¹ after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, ***based on a preponderance of the evidence,***² detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (I) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the ***presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product***³

¹Comment: A ten day period to act is insufficient, especially given the burden of proving that the standard fails to protect a state’s citizens within that period.

²Comment: If legislators don’t want something to be a law, they simply vote NO. No preponderance of evidence is required to reject legislation -- or to pass it for that matter.

³Comment: States will not be able, therefore, to take a more free market approach than the Commission dictates. Is this America? This section truly intrudes on legislative prerogative.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of ***all Uniform Standard*** involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing

Uniform Standards involving long-term care insurance products and those subsequently promulgated.

Comment: Just a typo. Change “all Uniform Standard” to “all Uniform Standards” or change “all” to “any”.

Drafting Note: The Working Group encourages States joining the Compact to refrain from using this so-called “front end” opt out for long-term care insurance products. The Working Group recognizes many important factors which support the development of Uniform Standards for long-term care insurance products, including: the mobile nature of the population in this country and the need for greater uniformity among the States regarding product standards for long-term care insurance products; the assertion that long-term care insurance products serve as a retirement security product that competes with other products offered by financial institutions; and long-term care insurance products are used in connection with life insurance and annuity products and therefore should also be eligible for consideration of appropriate Uniform Standards.

5. ***Effect of Opt Out.*** If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Comment: A very unusual way to write laws for states: Something is a law, until the state writes a law saying it's not a law. Even the federal government doesn't do that.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. ***If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.***

Comment: There is absolutely no likelihood that a state will opt out of a Uniform Standard before it is promulgated, as the lawmaking process is anything but fast. The effect of this provision is that legislatures will have lost control of products sold in their states. Using only the “toughest standards” as the Uniform Standard will force smaller companies out of the market place. This is not good for consumers, as some state legislatures recognize.

6. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition ***shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective*** unless the court finds that the petitioner has a substantial likelihood of success. ***The court shall give deference to the actions of the Commission*** consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

Comment: Court must give deference to Commission. Not exactly balanced scales of justice here.

ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The Commission *shall promulgate Rules to establish conditions and procedures under which the Commission shall make its information and official records available to the public for inspection or copying.* The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Comment: The Commission itself will decide later what documents it generates are considered public records. Very curious.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, *the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.*

Comment: Interesting but quite nonreciprocal concept. The Commission can disclose records a state regards as confidential; the state cannot disclose as public any document the Commission considers confidential.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.
4. *The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall maintain the sole authority to oversee the market regulation of the activities of the Insurer* in accordance with the provisions of the State's law in relation to such activities; provided, however, that no activity of an Insurer shall constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

Comment: Our state, not the Commission, determines what authorities our Insurance Commissioner possesses. This provision could also substantially disembowel the state insurance commissioner with regard to authorities granted by his state's legislature, depending on how far beyond product approval the Commission's Bylaws go toward product regulation. A state commissioner could also raise the penalty for a state violation by bringing the insurer to the Compact Commission for penalty.

ARTICLE IX. DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, *to resolve any disputes* or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall *promulgate an Operating Procedure providing for resolution of such disputes*.

Comment: This is what federal courts are for.

ARTICLE X. PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.
2. The Commission shall establish *appropriate filing* and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

Comment: Commission could delegate its duties by requiring insurers to submit filings through a third party filer.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. ***The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. The decision of the review panel shall be the final action of the Commission and not subject to review by any court.*** Notwithstanding the foregoing, an allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, section 5.

Comment: What happened to the promise to follow the Model State APA? This will even fail to follow most, if not all, states' constitutions which guarantee appellate review to all legal persons aggrieved by a trial court decision. Commission assumes full judicial function here, taking away a business's right to appeal to a court when the commission is merely wrong. No business should have to allege arbitrary, capricious or abusive behavior by the Commission, since it would remain its regulator even after this disagreement.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. ***Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing,*** subject to the appeal process in section 1 above.

Comment: Insurers do not gain a more certain market place.

ARTICLE XII. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.
2. The Commission shall collect ***a filing fee*** from each Insurer and Third Party Filer filing a product with the Commission ***to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.***

Comment: How much will be collected above the amount sufficient to fund the Commission so fees can be remitted to states? Is there a pro forma budget for this Commission, so insurers will have some expectation what these new fees will be?

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

Comment: Article VII contains different procedures for rulemaking and opting out. There is no mention there of which process will be considered applicable to budget approval. If the budget is considered in the category of rules, there is no specific mention of notice and hearing there, only a fairly tentative pointing to model state administrative procedure acts. Annual budget is mentioned in Article V, 3, which requires consulting with and reporting to legislative advisory committee.

4. The Commission shall be ***exempt from all taxation*** in and by the Compacting States.

Comment: What activities will the commission have that would otherwise be subject to taxation? This is a broad exemption and would include sales and property taxes in the state where the Commission has its offices. This non-profit corporation chooses to be most like a government agency when it comes to being exempt from taxation.

5. The Commission ***shall not pledge the credit*** of any Compacting State, *except* by and with the appropriate legal authority of that Compacting State.

Comment: So states may be expected to assume debt of the Commission.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject ***to the accounting procedures established under its Bylaws.***¹ The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor ***and legislature of the Compacting States, which shall include a report of the independent audit.*** The Commission's internal accounts, any ***work papers related to any internal audit and any work papers related to the independent audit, shall be confidential***²; provided, that such materials may be shared with the Commissioner of any Compacting State and shall remain confidential pursuant to ***Article VII***³ herein.

¹***Comment: No other government agency or business is permitted to develop its own accounting procedures that could be inconsistent with general accepted accounting principles or statutory accounting.***

²***Comment: This is contrary to rules for government agency audits in Louisiana. Agencies' internal audits are indeed subject to the public records law. Work papers of***

the Legislative Auditor or independent auditing firm would not be subject to the public records law.

³*Comment: Another typo. References to document confidentiality are in Article VIII.*

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.
2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.
3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. *No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.*

Comment: Need to amend the Compact is unlikely. This Commission already has broad powers.

ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal
 - a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact (“Withdrawing State”) by enacting a statute specifically repealing the statute which enacted the Compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute.

However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, *on the date* the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in subsection e. of this section.

Comment: Technical correction — change “on the date” to “prior to the date.” Because of the prior notice to the Commission of pending legislation to repeal, this is an absolute way for the Commission to get around a legislature which has begun action to repeal. While the legislation is pending or passed but not yet effective, the Commission could approve products in absolute defiance of a state legislature’s will.

- c. The Commissioner of the Withdrawing State shall ***immediately notify*** the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.
- d. The Commission shall notify the ***other Compacting States*** of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

Comment: If the Commissioner of the withdrawing state recommends withdrawal to the legislature, he still has an obligation to alert the opposition. Will Commission be permitted to lobby the state legislature in opposition to the legislation?

- e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, ***the performance of which extend beyond the effective date of withdrawal***, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission’s approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.

Comment: When a state realizes its liabilities are too great from having delegated powers to this Commission and makes the decision to withdraw, it will still have the liabilities going forward. States will be responsible for future debts of the Commission, even after withdrawing from the Compact.

- f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

- a. If the Commission determines that any Compacting State has at any time defaulted (“Defaulting State”) in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, ***failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules***. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State’s suspension pending a cure of

the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

Comment: There is no section of this Compact titled “Obligations and Responsibilities of Compacting States.” It would be helpful if compacting states knew what actions or inactions could put them in default before they sign on.

- b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to paragraph 1 of this Article.
 - c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.
3. Dissolution of Compact
- a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.
 - b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and ***any surplus funds shall be distributed in accordance with the Bylaws.***

Comment: The Bylaws will be created after this document is ratified by states. States should be told what will happen to funds upon dissolution from the outset.

ARTICLE XV. SEVERABILITY AND CONSTRUCTION

- 1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
- 2. The ***provisions of this Compact shall be liberally construed to effectuate its purposes.***

Comment: As if it wasn’t broad enough to begin with.

ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

- 1. Other Laws

- a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in paragraph b. of this Article.
- b. For Products filed with the Commission or Advertisement subject to the requirements of this Compact, the Rules, Uniform Standards ***and any other requirements*** of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products and Advertisement.

Comment: This language indicates the Commission will have requirements for products and advertising that are not actually formally adopted.

- c. All insurance products filed with individual States shall be subject to the laws of those States.
2. Binding Effect of this Compact
- a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.
 - b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.
 - c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.
 - d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

Comment: Drafters recognize the likelihood that this compact will be considered unconstitutional by states.